UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES ALLEN,

Plaintiff, Case No.

vs

FCA US LLC,

Defendant.

AKEEL & VALENTINE, PLC
Shereef H. Akeel (P54345)
Hasan Kaakarli (P81099)
Adam Akeel (P81328)
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PLAINTIFF'S COMPLAINT AND JURY DEMAND

NOW COMES, Plaintiff, James Allen, individually by and through his attorneys, AKEEL & VALENTINE, PLC, and state as follows:

NATURE OF CLAIM

1. This is an employment race discrimination claim under the Elliott-Larsen Civil Rights Act ("ELCRA"), MCL 37.2101 et seq., and for Equal Rights Under the Law, 42 U.S.C. § 1981.

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PARTIES AND JURISDICTION

2. Plaintiff, JAMES ALLEN, an African American, was an employee of Defendant at all relevant times herein, and is a resident of the State of Michigan.

3. Plaintiff's last day of employment with Defendant was on or about October 4, 2016. Plaintiff has a Bachelor's Degree in manufacturing engineering.

4. Defendant, FCA, is a Foreign Limited Liability Company incorporated in Delaware.

5. This Honorable Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, because Plaintiffs' claims raise a federal question under 42 U.S.C. § 1981.

6. This Honorable Court also has supplemental jurisdiction over Plaintiffs' claims under Michigan law pursuant to 28 U.S.C. § 1367(a) because they are inextricably intertwined with the federal claims and arise out of the same nucleus of operative facts.

7. Venue is proper in this Honorable Court as Defendant conducts business within the Eastern District of Michigan and are subject to personal jurisdiction within the Eastern District of Michigan and a substantial part of the events giving rise to the claims alleged occurred in the Eastern District of Michigan, *see* 29 U.S.C. § 1391(b).

EVALUATION PROCESS

8. At all relative times herein, employees are rated, and evaluated under a two-step process ("Evaluation Process"). First, employees are rated either as "High", "Medium", or "Low" by their direct supervisor as to their performance; this is known as the Performance and Leadership Management Rating or "PLM" Rating. Then, there is a calibration process where a numerical score is discussed among management, the majority of whom are white, resulting in a numerical score or "PLM Score", being given to the employee.

9. This Evaluation Process, which incorporates the PLM Rating and PLM Score, has been implemented under the direction, supervision, and control of senior leadership, led by CEO Sergio Marchionne, to be used on a company-wide basis.

10. Furthermore, employees are typically rated within a 9-Box Score, where a rating of 1, 2, and 4 is identified by a red color (as in danger and usually associate with "low"); a rating of 3, 5, and 7 is identified by a yellow color (as in warning); and a rating of 6, 8, and 9 is identified by a green color (as in effective and high performer).

11. An employee who scores below a 5 on the 9-Box Score can result in that employee being place on a Performance Improvement Program, otherwise known as a PIP, and then that employee could be subject to termination.

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12. During the calibration process, photos of the employees who are being evaluated are displayed and/or used by the majority white/non-black managers when adjusting employees' rating scores referenced above.

13. These scores follow a recommended distribution, or forced distribution, which requires management to arbitrarily and subjectively rate a certain number, or percentage, of employees at scores either 5 or below, regardless of performance.

14. And as part of the Evaluation Process, the higher the score, the higher the bonuses and additional pay awarded, in addition to increases in advancement opportunities.

15. Bonus-based ratings also increased the higher up the hierarchy an employee reaches. For example, a Senior Professional's rating of 6/9 (nine being the highest) would net a certain bonus, whereas a Senior Manager's rating of 6/9 would net a bigger bonus.

16. For at least 2014 and 2015, on a company-wide basis, salaried, non-union, non-African American employees of a Senior Manager Comp Level to Professional, and subject to the Evaluation Process, were being treated far more favorably overall, as to their compensation, ratings, advancement opportunities, terms, and conditions than salaried, non-union African American employees.

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17. In fact, salaried, non-union African American employees that were subject to the Evaluation Process for years 2014, and 2015, were being rated with lower scores, at 5 or below, at a disproportionate and alarming rate than salaried, non-union, non-African American employees.

18. Plaintiff's PLM Rating after the subjective calibration for 2014, and 2015 was a 4 and a 2 respectively.

19. As a result of the low rating, Plaintiff was put on PIP, which adversely impacted the amount of bonuses, and merit increases he received

20. As a result of the low rating, Plaintiff's advancement opportunities were impeded.

21. Plaintiff performed his job satisfactorily.

22. Still and as a result of the low rating, Plaintiff's employment was terminated on or about October 4, 2016.

23. At least in the fall of 2016, Management had been notified that its existing Evaluation Process has resulted in a disparate impact on salaried, non-union African American employees for at least the years 2014 and 2015, which has led to lower compensation, benefits, bonuses, and a decline in advancement opportunities.

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COUNT I

VIOLATION OF 42 U.S.C. § 1981

24. Plaintiff incorporates by reference the foregoing paragraphs, as though fully set forth herein.

25. 42 U.S.C. § 1981(a) provides:

> (b) **Statement of equal rights**
>
> *All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.*

26. Further, 42 U.S.C. § 1981(b) provides:

> (b) **"Make and enforce contracts" defined**
>
> *For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.*

27. Plaintiff was subjected to intentional discrimination because he is African American, a protected class.

28. Plaintiff was qualified for the positions he held.

29. Plaintiff was given lower evaluations or PLM Scores than his similarly situated non-African American employees.

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30. Plaintiff was subjected to an Evaluation Process that relied heavily on subjective input, including the use of photographs to identify his race, and the recommended or forced distribution practices, rather than objective data, which was being effectuated by decision makers outside of the protected group.

31. Had Plaintiff not been African American, Plaintiff would not have received such consistently lower scores in comparison to non-African Americans employees.

32. Plaintiff was treated less favorably than his colleagues similarly situated that were not black

33. Defendant has no legitimate business interest for rating Plaintiff lower than non-African Americans despite fulfilling company objectives.

WHEREFORE, Plaintiff request this Honorable Court award judgment against Defendant for compensatory damages, economic and noneconomic for his wrongful termination, in addition to punitive or exemplary damages plus costs, interest and attorney fees, as allowed under the Act.

COUNT II

RACE DISCRIMINATION IN VIOLATION OF ELCRA, MCL 37.2101 et (DISPARATE IMPACT/TREATMENT)

34. Plaintiff incorporates by reference the foregoing paragraphs, as though fully set forth herein.

35. Plaintiff is African-American.

36. Plaintiff was qualified for the position that he held with Defendant.

37. Defendant's subjective Evaluation Process policy and/or practice regarding their subjective evaluation system, which include the use of photographs and forced distribution of low to medium PLM Scores had a disparate impact on African American non-union salaried employees, including Plaintiff.

38. Defendant, through its agents, representatives, and/or employees, treated Plaintiff differently from similarly situated non-African American employees in the terms and conditions of employment, based on unlawful considerations of race.

39. Defendant's actions were intentional in disregard for Plaintiff's rights and sensibilities.

40. Plaintiff was also treated less favorably, as to terms, and conditions, than his colleagues similarly situated.

41. The existing subjective performance evaluation system, which includes the use of photographs and recommended forced distribution, serves no significant business need.

42. Defendant can evaluate its employees with an evaluation tool with less discriminatory impact.

43. As a direct and proximate result of Defendant's unlawful actions. Plaintiff has sustained injuries and damages including, but not limited to, loss of

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earnings and earning capacity; loss of career opportunities; humiliation and embarrassment; mental and emotional distress; and loss of the ordinary pleasures of everyday life, including the right to pursue gainful occupation of choice.

WHEREFORE, Plaintiff request this Honorable Court award judgment against Defendant for compensatory damages, economic and noneconomic for his wrongful termination, in whatever amount the jury finds necessary, in addition to punitive or exemplary damages plus costs, interest and attorney fees, as allowed under the Act.

Respectfully submitted,

AKEEL & VALENTINE, PLC

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Dated: March 29, 2017

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JURY DEMAND

NOW COMES Plaintiff, JAMES ALLEN, by and through his undersigned counsel, AKEEL & VALENTINE, PLC, and hereby demands a trial by jury of the above-captioned cause of action.

Respectfully submitted,

AKEEL & VALENTINE, PLC

/s/: SHEREEF H. AKEEL
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Dated: March 29, 2017

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